

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



KARA MARINO,

Plaintiff,

23-CV-1064 (JLS) (LGF)

v.

THE STATE UNIVERSITY OF NEW
YORK AT BUFFALO, and STATE
UNIVERSITY OF NEW YORK BOARD
OF TRUSTEES,

Defendants.

DECISION AND ORDER

Plaintiff Kara Marino (“Plaintiff”) commenced this action pursuant to Title IX of the United State Education Amendments of 1972, 20 U.S.C. § 1681(a) (“Title IX”), and New York common law seeking relief against The State University of New York at Buffalo (“UB”) and State University of New York Board of Trustees (“the Board”) (collectively, “Defendants”). *See* Dkt. 1. Plaintiff asserts claims against Defendants for sex discrimination, breach of contract, emotional distress, and negligence—including, that Defendants’ Title IX grievance program was deficient, which led to Plaintiff’s sexual assault, and that UB failed to consider key evidence and its definition of “consent” in finding that the perpetrator’s conduct did not violate UB’s Student Code of Conduct. *Id.*

Plaintiff filed her complaint on October 9, 2023. Dkt. 1. In response, Defendants filed a motion to dismiss and a memorandum in support. Dkt. 7. Plaintiff then filed a memorandum in opposition to the motion to dismiss. Dkt. 10. Defendants replied. Dkt. 13.

On June 21, 2024, Judge Foschio¹ issued a Report, Recommendation, and Order (“R&R”) recommending that this Court dismiss the complaint. Specifically, Judge Foschio recommended dismissing the state law claims without leave to amend, as barred under the Eleventh Amendment, and dismissing the Title IX claims with leave to amend. Dkt. 14. Neither party filed objections, and the time to do so has expired.

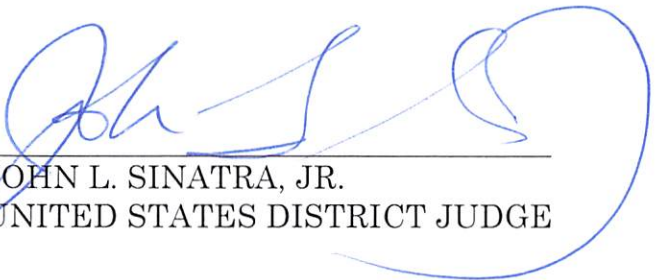
A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

¹ This Court referred the case to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 8.

The Court carefully reviewed the R&R and the relevant record. Based on that review, the Court accepts and adopts Judge Foschio's recommendation. Thus, for the reasons stated above, and in the R&R, the complaint is DISMISSED, with leave to amend solely as to the Title IX claims. This case is referred back to Judge Foschio for further proceedings consistent with the referral order entered on December 4, 2023. Dkt. 8.

SO ORDERED.

Dated: July 23, 2024
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE